

EX PARTE OR LATE FILED

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N. W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

(202) 662-6000

FACSIMILE: (202) 662-6291

WRITER'S DIRECT DIAL NUMBER

202-662-5360

LECONFIELD HOUSE

CURZON STREET

LONDON W1Y 8AS

ENGLAND

TELEPHONE: 44-071-495-5655

FACSIMILE: 44-071-495-3101

KUNSTLAAN 44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-549-5230

FACSIMILE: 32-2-502-1598

May 20, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby
Counter TW-A325
Washington, D.C. 20554

***Re: In re Petition of U S WEST Communications, Inc. for a Declaratory
Ruling Regarding the Provision of National Directory Assistance,
CC Docket No. 97-172
Ex Parte Comments***

Dear Ms. Salas:

We write on behalf of INFONXX, Inc. ("INFONXX"), a competitive directory assistance ("DA") provider, in connection with the Commission's consideration of a petition filed by U S WEST, Inc. ("U S WEST") seeking forbearance from the requirements of Sections 271 and 272 of the Communications Act (the "Act") to permit U S WEST to provide National Directory Assistance ("NDA") services on an integrated basis.¹ Although INFONXX believes that U S WEST should have sought forbearance from the Commission *prior to* initiating NDA service on an interLATA basis, we welcome competition in the DA service market and accordingly consider the critical issue in this proceeding to be the establishment of sufficient safeguards to ensure that competitive DA providers are able to compete fairly with U S WEST's NDA service. Thus, in the event the Commission decides that NDA is an incidental interLATA service and is entitled to forbearance under Section 10 of the Act, we strongly urge the Commission to condition the grant of forbearance on U S WEST's affording *all* competitive DA providers access to all subscriber listing information on which U S WEST relies to provide

¹ Further Submission in Support of Petition for Declaratory Ruling of U S WEST, CC Docket No. 97-172, at 19-20 (Mar. 11, 1998) ("U S WEST Submission"). U S WEST later requested, and the Commission agreed, to treat U S WEST's Further Submission as a formal petition for forbearance under Section 10 of the Act. See Public Notice, CC Docket No. 97-172 (Mar. 19, 1998).

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NDA, at nondiscriminatory rates, terms and conditions. Of course, the Commission should recognize that any safeguards established in this proceeding would only partially address the competitive challenges facing competitive DA providers. Since the safeguards would apply only to Bell operating companies ("BOCs") offering NDA, independent telephone companies such as GTE, Cincinnati Bell, Frontier and others would be left free, absent another FCC rule to the contrary, to deny access or to discriminate in price or conditions in offering access to subscriber listing information.²

The Commission Should Promote Competition In The Directory Assistance Market.

INFONXX has been providing competitive DA services since 1992, when it opened for business with five employees – the two founders and three telephone operators – and a realization that directory assistance, like customer premises equipment, long distance and local exchange, could be provided by an alternative to the incumbent monopoly. INFONXX was the first company to challenge an incumbent provider in its market, and many retail customers, mostly businesses, welcomed the opportunity to switch to an alternate provider who could deliver DA services at higher quality and better prices. More recently, INFONXX has become a "carriers' carrier" for directory assistance, providing DA services to a wide array of cellular carriers, including Airtouch and Bell Atlantic Mobile, as well as to competitive local exchange carriers such as Teleport. Today, INFONXX has nearly 1,000 employees, operates four call centers, handles 75-100 million calls per year and provides service in twenty-seven major markets around the country.

INFONXX has achieved this impressive growth despite being at a significant competitive disadvantage to local exchange carriers and competitive local exchange carriers ("CLECs") able to provide directory assistance services using the completely accurate subscriber databases maintained by LECs in their positions as dominant providers of local exchange services. INFONXX's success has stemmed from: (i) dedication to customer service and development of customer-friendly innovations such as free call completion, enhanced information services such as movie listings and personal rolodex services, and a variety of return-to-operator functions; (ii) competitive pricing; (iii) the provision of nationwide DA service through a single number; and (iv) its ability to provide high levels of service accuracy despite having to rely on databases that are only 70-75% accurate.³ Recognizing the competitive threat provided by INFONXX and other competitive DA providers, ILECs like U S WEST have responded by unilaterally introducing interLATA nationwide directory assistance services while

² The Commission is considering this problem of discrimination on a systemic fashion in the proceeding to implement Section 222(e), CC Docket No. 96-115.

³ INFONXX achieves accuracy levels of 93-95% by using, when necessary, the electronic white pages service provided by the LECs. However, the electronic white pages service is available only at very high costs (approximately 25¢ per listing) and prolongs the time it takes to respond to a request, making it unworkable as a long-term business solution.

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continuing to deny competitive DA providers access to subscriber listing information. The Commission must impose safeguards as part of this proceeding or else the competition and consumer benefits described above will be stifled.

The Commission Should Condition Any Grant Of Forbearance On U S WEST's Nondiscriminatory Provision Of Subscriber Listing Information To All Competitive Directory Assistance Providers.

If the Commission classifies U S WEST's NDA service as an incidental interLATA service and determines that the service is entitled to forbearance from Section 272's separate affiliate requirements, then the Commission should condition such forbearance on U S WEST's compliance with critical safeguards that will help to promote fair competition in the market for competitive DA services, at least as between competitive DA providers and the BOCs to which the safeguards would apply. Specifically, the Commission should require U S WEST, as a *pre-condition* for providing NDA services on an integrated basis, to provide all competitive DA providers (whether or not such providers are "telecommunications carriers") with access to all directory listing information U S WEST relies on to provide its NDA service, including data from independent LECs and CLECs within its territory. U S WEST should be required to provide the listing information to other providers on a cost basis at reasonable terms and conditions.⁴

As MCI's comments in this proceeding persuasively establish, the public interest demands imposition of these kinds of safeguards. Comments of MCI Telecommunications Corp., CC Docket No. 97-172, at 24-25 (Apr. 9, 1998). Moreover, there is ample precedent for imposing such safeguards as a condition of granting forbearance under Section 10. In the Section 272 Forbearance Order, the Commission decided to forbear from applying the Section 272 separate affiliate requirements to BellSouth's provision of electronic reverse directory services. Memorandum Opinion and Order, In re Bell Operating Cos., CC Docket No. 96-149, 13 FCC Rcd 2627 (1998) ("Section 272 Forbearance Order"). However, the Commission also determined that it should impose conditions on the grant of forbearance in order to ensure that the charges and practices for or in connection with the service were not unjustly or unreasonably discriminatory. Id. ¶ 83. The Commission noted that under Section 272, a Bell operating company, in dealing with a covered affiliate, is prohibited from discriminating between the affiliate and "any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards." 47 U.S.C. § 272(c)(1). Thus, if BellSouth were operating its reverse directory services through a separate affiliate, it would be required to provide all the listing information from its own customers and from other LECs to unaffiliated entities "at the same rates, terms, and conditions, if any, it charges or imposes on its own reverse directory operations." Section 272 Forbearance Order, ¶ 80. The Commission concluded that if

⁴ As discussed below, the most efficient mechanism to accomplish this goal would be a requirement that the SLI offering be set at the same price and terms offered pursuant to an interconnection agreement approved under Section 252 of the Act.

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it permitted BellSouth to offer integrated reverse directory services, then it should impose a nondiscrimination requirement to guard against discriminatory behavior. Otherwise, BellSouth's access to its database would give it competitive advantages stemming from its dominant position in the provision of local exchange services in the region. The Commission concluded:

These advantages will persist if BellSouth continues to deny unaffiliated entities access to all of the listing information it uses to provide reverse directory services or if BellSouth fails to provide such access at the same rates, terms, and conditions, if any, that it charges or imposes on itself. We therefore conclude that, until it provides such access at those rates, terms, and conditions, BellSouth's subscriber listing information practices will be unjustly or unreasonably discriminatory within the meaning of section 10(a)(1). . . . We therefore condition our forbearance from the application of section 272's separate affiliate requirement on BellSouth's making available to unaffiliated entities all directory listing information that it uses to provide its interLATA reverse directory services . . . at the same rates, terms, and conditions, if any, it charges or imposes on its own reverse directory operations.

Id. ¶¶ 82-83.

The rationale for applying safeguards in the Section 272 Forbearance Order is fully applicable to U S WEST's provision of NDA services. U S WEST has access to fully accurate subscriber information as a result of the fact that it is the dominant LEC in its region. It has always had this competitive advantage over competitive DA providers like INFONXX, but competitive DA providers initially had the advantage of providing DA services on a nationwide basis through a single number. However, once U S WEST and other ILECs unilaterally began providing interLATA NDA services, competitive DA providers effectively lost the advantage of this feature without gaining any access to the ILEC subscriber listing information. If U S WEST and other ILECs were permitted to continue to provide interLATA NDA services without being required to afford nondiscriminatory access to their subscriber listing information, they would be able to leverage their dominant power in the local exchange market and to engage in unjustly or unreasonably discriminatory practices in violation of Section 10(a)(1).

Accordingly, the Commission should not permit U S WEST to continue to provide interLATA NDA services on an integrated basis unless U S WEST *first* "mak[es] available to unaffiliated entities all directory listing information that it uses to provide its interLATA [NDA] services[, including information from independent LECs and CLECs,] . . . at the same rates, terms, and conditions, if any, it charges or imposes on its own [NDA] operations." Id. ¶ 83. Under these safeguards, the rates U S WEST may charge for its directory information should be determined on an imputed cost basis. If the Commission does not impose an imputed costs requirement, then a useful and workable substitute would be a requirement that

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SLI be made available at the same rates that such information is made available pursuant to a Section 251 interconnection agreement.

Because U S WEST Has Demonstrated Its Intent To Take Advantage Of Regulatory Lag, The Commission Must Be Pro-Active In Promoting Directory Assistance Competition.

Given U S WEST's and other BOCs' demonstrated willingness to ignore the statutory restrictions on their provision of interLATA services by initiating interLATA NDA service without seeking Commission authorization, the Commission must be vigilant in strictly enforcing the conditions for forbearance by taking the following steps: (1) The Commission should provide that *before* any grant of forbearance for NDA service is deemed effective, the Commission must make a determination, through a notice-and-comment proceeding and by a date certain, that U S WEST (and any other BOC seeking to provide NDA services) is in actual compliance with the safeguard requirements. (2) Once a grant of forbearance is deemed effective, the Commission should guard against back-sliding by strictly enforcing, including through the use of show-cause orders, the obligation of all LECs under Section 222(e) of the Act to provide subscriber listing information at nondiscriminatory rates, terms and conditions to all persons, including competitive DA providers, who request such information for the purpose of "publishing directories in any format."

* * * * *

If you have any questions, please contact the undersigned.

Sincerely,



Gerard J. Waldron
Mary Newcomer Williams
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 662-5360

Counsel to INFONXX

cc: Service List

May 20, 1999

CERTIFICATE OF SERVICE

I, Mary Newcomer Williams, do hereby certify that on this 20th day of May, 1999, a copy of these comments was delivered by hand, unless otherwise indicated, to the following persons:

The Honorable William E. Kennard
Chairman
Federal Communications Commission
Room 8-B201
445 12th Street, S.W.
Washington, D.C. 20554

ATTN: Tom Power

The Honorable Harold Furchtgott-Roth
Federal Communications Commission
445 – 12th Street, S.W.
Washington, D.C. 20554

ATTN: Kevin Martin

The Honorable Gloria Tristani
Federal Communications Commission
Room 8-C302
445 – 12th Street, S.W.
Washington, D.C. 20554

ATTN: Sarah Whitesell

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Washington, D.C. 20554

The Honorable Susan Ness
Federal Communications Commission
Room 8-B115
445 12th Street, S.W.
Washington, D.C. 20554

ATTN: Linda Kinney

The Honorable Michael K. Powell
Federal Communications Commission
Room 8-A204A
445 – 12th Street, S.W.
Washington, D. C. 20554

ATTN: Kyle Dixon

Lawrence E. Strickling
Chief
Common Carrier Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Washington, D.C. 20554

Magalie Roman Salas
Secretary
Federal Communications Commission
445 – 12th Street, S.W.
12th Street Lobby
Counter TW-A325
Washington, D.C. 20554

Michelle Carey
Common Carrier Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Washington, D.C. 20554

Audrey Wright
Common Carrier Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Washington, D.C. 20554

Carol E. Matthey
Common Carrier Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Washington, D.C. 20554

Robert Atkinson
Common Carrier Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Washington, D.C. 20554

Jordan Goldstein
Common Carrier Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Washington, D.C. 20054

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036

William T. Lake*
John H. Harwood II
Samir Jain
Todd Zubler
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037
Counsel for U S WEST, Inc.

Robert B. McKenna*
Richard A. Kerre
Suite 700
1020 19th Street, N.W.
Washington, D.C. 20036
Counsel for U S WEST, Inc.

Mark C. Rosenblum*
Ava B. Kleinman
James H. Bolin, Jr.
AT&T Corp.
Room 3252J1
295 North Maple Avenue
Basking Ridge, NJ 07920

R. Dale Dixon, Jr.*
Frank W. Krogh
Lisa B. Smith
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Frank M. Panek*
Ameritech
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Robert M. Lynch*
Durward D. Dupre
Hope Thurrott
SBC Communications Inc.
One Bell Plaza, Room 3023
Dallas, TX 75202

Christine Jines*
Director—Federal Regulatory
SBC Telecommunications, Inc.
1401 I Street, N.W.
Suite 1100
Washington, D.C. 20005

John M. Goodman*
Bell Atlantic
1300 I Street, N.W.
Washington, D.C. 20005

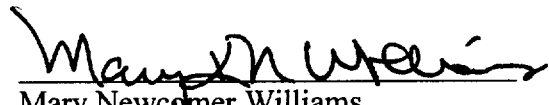
Leon Kestenbaum*
Vice President & General Counsel, Federal
Sprint Communications, L.P.
1850 M Street, N.W.
Washington, D.C. 20036

Sue D. Blumenfield*
Jay Angelo
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
Counsel for Sprint Communications, L.P.

Lonn L. Beedy*
Metro One Telecommunications, Inc.
8305 S W Nimbus
Beaverton, OR 97008

Michelle W. Cohen*
Paul, Hastings, Janofsky & Walker LLP
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400
Counsel for Metro One Telecommunications, Inc.

* Denotes delivery by first-class mail, postage pre-paid.


Mary Newcomer Williams